MINTZ LEVIN

Sara F. Leibman | 202 434 7327 | sfleibman@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

October 28, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
CG Docket No. 04-208, WT Docket No. 05-194, CC Docket No. 98-170

Dear Secretary Dortch:

On October 26, 2005, Tom Sugrue, Kathleen O'Brian Ham, and the undersigned, on behalf of T-Mobile USA, Inc., met with Monica Desai, Jay Keithley, Genaro Fullano, Leon Jackler, Peter Tenhula, and Erica McMahon of the Consumer and Governmental Affairs Bureau to discuss issues raised in the Commission's truth-in-billing ("TIB") and early termination fees ("ETF") proceedings. Among the issues addressed by T-Mobile were the following:

- Additional regulation of wireless billing and disclosure practices is unnecessary because there is no evidence of market failure. As a matter of *business* strategy, the highly competitive wireless industry has no choice but to answer consumer demands with prompt and effective action. T-Mobile, for example, has introduced "Personal Coverage Check," which allows prospective subscribers to assess the quality of T-Mobile's coverage down to the neighborhood level *before they buy*. In addition, for new customers choosing contractual (as opposed to prepaid) plans, T-Mobile's terms are only one year. Moreover, most wireless carriers, including T-Mobile, have voluntarily signed on to the CTIA Consumer Code, which requires, among other things, accurate descriptions of charges on bills, separation of charges retained by the carrier from taxes and fees remitted to the government, penalty-free cancellation periods, and detailed point-of-sale disclosures.

- If the Commission nevertheless determines that further billing regulation is warranted, such rules should be adopted and enforced at the federal level. As T-Mobile's experience with the California "Bill of Rights" demonstrated, carriers have to change their systems nationwide to accommodate state-specific requirements. Just two slightly divergent state billing format and disclosure regimes (adopted via legislation, rulemaking, or enforcement actions) would be extremely costly and potentially impossible to comply with.

- The Commission should rule that ETFs are "rates charged" under section 332(c)(3). Like other components of its rates, T-Mobile charges customers an ETF to compensate the company for the costs it incurs in acquiring and providing service to customers. Most new and returning customers signing term contracts receive steeply discounted or free handsets and large "buckets" of minutes. In addition, the ETF helps recover the costs of running credit checks on new customers; providing customer care; creating and distributing equipment documentation, welcome packages, and contracts; programming phones; and engaging in marketing, advertising, and billing activities. Similarly, wireless carriers often have to pay commissions to sales representatives and dealers.

- While all wireless carriers offer no-term options, term pricing gives consumers the best value for their money. Term plans are widely used and very popular in many industries. Indeed, one of the consumer advocates in the ETF proceeding, Consumers Union ("CU"), offers an online products rating service, the price of which is discounted correspondingly with the length of the term (*e.g.*, \$26/year or \$4.95/month). The difference between CU's and wireless carriers' term plans is that CU requires customers to pay the entire subscription fee up front, while wireless providers allow customers to spread their payments over the course of the term (with an ETF if they choose to stop paying the monthly rate). Because CU has already collected its customer's money, the customer remains "locked in" to CU's service even if he finds a better deal (say, from Consumers' Checkbook) before the term has expired. There is nothing wrong with CU's practice, however -- on the contrary, the CU subscriber voluntarily chose a fixed-term, upfront payment plan in exchange for lower rates. The same is true for wireless consumers, who overwhelmingly opt for term plans with ETFs in return for significantly discounted or free phones and flat-fee airtime pricing.

The attached slide presentation was distributed during the meeting.

Pursuant to the Commission's rules, a copy of this letter and the attachment is being filed with the Secretary via ECFS, and a copy of this letter is being provided to all attendees via e-mail.

Sincerely,

/s/

Sara F. Leibman

cc: Monica Desai
Jay Keithley
Genaro Fullano
Leon Jackler
Peter Tenhula
Erica McMahon

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